



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examination

1100 Commerce St. - 4920 DAL

Dallas, TX 75242

501-03.00

Release Number: 201405021

Release Date: 1/31/2011

Date: March 13, 2009

Person to Contact:

Identification Number:

Telephone Number:

In Reply Refer to: TE/GE Review

EIN:

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:

Dear :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

, has not been operating exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3). It is not a charitable organization within the meaning of Treasury Regulations section 1.501(c)(3)-1(d). It is not an organization which operates exclusively for one or more of the exempt purposes which would qualify it as an exempt organization. operates substantially for non-exempt purposes..

Based upon these reasons, we are prospectively revoking
IRC section 501(c)(3) tax exempt status to
January 1,

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. You have filed Form 1120 with us for the years ending December 31, and . Future returns should be filed with the appropriate Service Center. You have agreed to our determination by signing F.6018, "Consent to Proposed Action".

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

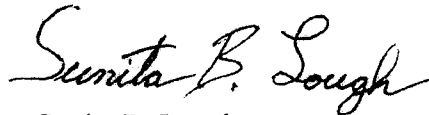
You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling (510) 637-2703, or writing to: Internal Revenue Service, Taxpayer Advocates Office, Oakland, CA 94612-5210.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

A handwritten signature in cursive script that reads "Sunita B. Lough".

Sunita B. Lough
Director, EO Examinations

Internal Revenue Service

Department of the Treasury

TE/GE Division
55 S. Market St. HQ-7600
San Jose, CA 95113

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Date: October 10, 2008

ORG
ADDRESS

Certified Mail - Return Receipt Requested

Dear ,

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, please sign and return the enclosed Form 6018, Consent to Proposed Adverse Action. We will send you a final modification or revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer ORG #EIN		Year/Period Ended December 31, 20XX

LEGEND

ORG - Organization name EIN - ein XX - Date Address - address
 City - city State - state Event - event

ISSUES:

1. Should the Section 501(c)(3) exemption ruling issued to ORG (the "Organization") be revoked because the organization does not meet the operational test of Internal Revenue Code (IRC) 501(c)(3)?
2. Should the Section 501(c)(3) exemption ruling issued to Organization be revoked for the additional reason that it failed to observe the record keeping and annual filing of information returns that are required from organizations exempt under 501(c)(3)?

FACTS:

Articles of Incorporation, Subsequent Corporate Status Suspension, and IRS

Determination Letter:

The Organization was incorporated on September 10, 19XX under the name: ORG. The Articles were amended on August 30, 19XX to include clauses stating that the corporation is organized exclusively for charitable, religious, educational and scientific purposes including the making of distributions to organizations that qualify for exemption under Internal Revenue Code (IRC) 501(c)(3), and that the corporation shall not carry any activities not permitted to a corporation exempt from income tax under IRC 501(c)(3).

IRS issued exemption letter 1045 on September 23, 19XX and recognized the Organization's exemption and public charity status under IRC sections 501(c)(3) and 509(a)(2)

The Organization's corporate status has been suspended by the State Secretary of State.

Organization's Activities

Organization is located in the City of State. It originated in or around 18XX as a mutual help association of Chinese immigrants to the USA. Organization has affiliates in several major cities, including in City, City, City, and City. Much of the Organization's activities are social functions and dining for the members and for the affiliates' members. Notable events in 20XX included Event festivities the Organization held in several restaurants on February 9, 20XX. Additionally, as the Headquarter for the affiliates, the Organization invited the officers and the members of the affiliates to attend its Event events, and played host to them, bearing respectively % and % of the hotel and meals cost for the affiliates' officers and members who attended. During the year the affiliates held their Event events (at different times during the year) and the Organization reciprocated and paid for transportation expenses of the officers and members to attend the affiliates' festivities (% and % respectively for officers and members' transportation costs).

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Other events that were paid for by the Organization included attending social functions that were organized by local City organizations. Those functions were often held in local restaurants.

Organization also provides social room for the members. The room is located at the ground floor of the Organization's owned building at Address State. The members have the use of the kitchen, coffee facilities, TV and cable, games and magazines, etc. Organization's paid staff includes a janitor who cleans and cares for the social room and the public areas of the Organization's buildings, and the English Secretary who is in charge of correspondence and communications with the members.

During the year Organization received various requests from other Organizations asking for help. The Organization gave about \$ to affiliates and gave about \$ to non affiliated nonprofits. Those contributions were not documented to be exclusively for 501(c)(3) exempt purposes.

Organization was supported during the year primarily by the rental fees earned from the two buildings it owns in Chinatown. The members have the right to rent there for a reduced fee. In 20XX a vacancy occurred and none of the members was interested. Then the unit was advertised and was rented to a non member. The properties are managed by a rental agent. There are no written guidelines stating what are the eligibility requirements to rent from the Organization.

Organization's Income and Notable Expenses in year 20XX:

Income: during the year 20XX the Organization received rent of about \$, comprised of approximately \$ and additional \$, respectively, from Organization's properties located at Address and Address in State.

Other income sources were \$ of contributions (from members and affiliates) and \$ of members' dues. The members pay annual membership dues of \$/ea and additional \$/ea for the use of the social room (called Room).

Expenses: the Organization paid approximately \$ to upkeep the two buildings. The larger items included insurance, property taxes, management, repair & maintenance, utilities etc. The Organization paid about \$ for members' functions. The larger items included: banquets-(\$), transportation and travel (\$), branch expenses (\$), and social room, (including cable and subscriptions) of approx. \$.

Annual Filing of Form 990

Organization has not filed annual information return forms 990 with IRS since it received exemption in 19XX.

LAW:

Issue 1:

Requirements for Exemption under IRC 501(c)(3):

FINAL-REG, TAX-REGS. §1.501(c)(3)-1(a)(1). Organizational and operational tests. (1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both

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organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

(2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

(d) Exempt purposes--(1) In general. (i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

FINAL-REG, TAX-REGS, §1.501(c)(3)-1(c)(1) Operational test --(1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3).

In First Libertarian Church v. Commissioner, 74 T.C. 396 (1980), the court held that an organization that was the outgrowth of a supper club and whose primary activities were holding meetings before supper, sponsoring the supper club, and publishing a newsletter did not qualify for exemption under IRC 501(c)(3). The organization failed to show that it successfully segregated the clearly social and political aspects of its supper club meetings and its publication from its stated purpose of furthering its religious doctrine of "ethical egoism"

Issue 2:

Requirement to Maintain Records and File Annual Returns to Retain and Support the organization's Exempt Status

Section 6001 of the Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 6033(a)(1) of the Code provides, except as provided in section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Section 1.6033-1(h)(2) of the regulations provides that every organization which has

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established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and section 6033.

Revenue Procedure 83-23, 1983-1 explains that generally, exempt organizations need to file annual information returns if their gross receipts are normally more than \$25,000.

In accordance with IRC section 6033(a)(1), Treas. Regs. section 1.6033-2(a)(1), Treas. Reg. Section 1.6033-2(g)(4), and the Instructions for Form 990, gross receipts means the gross amount received by the organization without reduction for any costs or expenses including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amount on the definition of gross receipts.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the ground that the organization had not established that it is observing the conditions required for the continuation of exempt status.

ISSUE 1:

TAXPAYER'S POSITION:

The taxpayer has not submitted a written protest to the examining agent yet.

GOVERNMENT POSITION

The government contends that ORG failed to meet the "operational test" under Regulations Section 1.501(c)(3)-1(c)(1) because the Organization engaged in substantial social and recreational activities that are not promulgated by IRC 501(c)(3) and those activities did not exclusively serve one or more of IRC 501(c)(3) purposes. Further, as explained in the court case of First Libertarian Church v. Commissioner, 74 T.C., organizations that conducted substantial social activities fail to qualify for exemption under Section 501(c)(3) because substantial portion of their activities do not serve purposes contemplated by Section 501(c)(3).

ISSUE 2:

TAXPAYER'S POSITION:

The taxpayer has not submitted a written protest to the examining agent yet.

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Name of Taxpayer ORG #EIN		Year/Period Ended December 31, 20XX

GOVERNMENT POSITION

The government contends that ORG failed to observe the annual filing of information returns that is required from organizations exempt under Section 501(c)(3). The Organization received gross income of over \$ and under IRS' Revenue Procedure 83-23 was required to file Forms 990 for the year 20XX and forward because it normally receives over \$ of gross receipts.

Therefore, as stated in Rev. Ruling 59-95 it is the government's position that Organization's exempt status should be revoked effective January 1, 20XX, for the additional reason that the Organization has not established that it is observing IRC 6033 and its regulations and the conditions required for the continuation of exempt status.

CONCLUSION:

Because the Organization failed to qualify for exemption under Section 501(c)(3) during the years 20XX, 20XX, 20XX and 20XX, the Government contends that Organization needs to file Forms 1120 -U.S. Corporation Income Tax Return for year 20XX and forward-including the years 20XX, 20XX and 20XX.